

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES

V.

NO. 04 10044 MLW

EDWIN SERRANO

MOTION FOR APPROPRIATE RELIEF

Under the advisory Sentencing Guideline this adult defendant, who has pleaded, because of prior felony convictions for crimes of violence, is subject to disposition as a career offender. U.S.S.G. § 4B1.1.

The two relevant convictions are from Middlesex Superior Court, docket numbers 1994-01511 and 1994-01391. As to each, with docket entries attached, the defendant submitted his motions to vacate convictions. See Exhibit A, number 1994-01511 and Exhibit B, number 1994-01391. Each motion was summarily denied by the Court, Hely, J. See Exhibit C attached hereto.

Thereafter undersigned counsel sought to have the defendant brought before the Superior Court to remove the defaults (See Exhibit C) and process the Motion to Vacate. See Exhibit D, number 1994-01511 and Exhibit E, number 1994-01391.

These motions were referred by Judge Hely to the First Criminal Session. See Exhibit F.

Thereafter, undersigned counsel learned that the United States Marshals would NOT honor a state court *habeas corpus*.

It thus came as no surprise that when the defendant's probation officer in Middlesex, Craig O'Leary, sought and got a *habeas corpus* for the defendant to appear on April 7, 2005, that it was not honored by the Marshals. See Exhibit G.

Without the cooperation of the Marshals, the defendant will not have the opportunity to present the grounds for his Motion to Vacate to the Superior Court.

The defendant's Board of Probation record (BOP) shows that he is in default on 1994-01391, and that a warrant has issued. See Exhibit H.

The failure of the Marshals and their announced policy to not respond to State court process violates their own policies. See Exhibit I.

The apparent recourse is for a Federal Judge to order the United States Marshals to bring the defendant to Middlesex Superior Court to answer to the default and to press his motions. Counsel is prepared again to seek a *habeas corpus* from Middlesex, directed to the United States Marshals.

See attached affidavit of counsel.

/s/Roger Witkin
ROGER WITKIN
6 Beacon Street, Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

DATED: September 14, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES

V.

CRIMINAL NO. 04 10044 MLW

EDWIN SERRANO

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the within document was served upon the attorney of record for the United States, AUSA Peter K. Levitt, and a courtesy copy to the Clerk of Court by mail and electronic filing, which was e-filed this day.

/s/ Roger Witkin
Roger Witkin
6 Beacon Street, Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

DATE: September 14, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES

V.

CRIMINAL NO. 04 10044 MLW

EDWIN SERRANO

AFFIDAVIT IN SUPPORT OF MOTION FOR APPROPRIATE RELIEF

1. I, Roger Witkin, am counsel o record for the defendant in both the Federal and State cases referenced herein.
2. Under the advisory Sentencing Guideline this adult defendant, who has pleaded, because of prior felony convictions for crimes of violence, is subject to disposition as a career offender. U.S.S.G. §4B1.1.
3. The two relevant convictions are from Middlesex Superior Court, docket numbers 1994-01511 and 1994-01391. As to each, with docket entries attached, the defendant submitted his motions to vacate convictions. Each motion was summarily denied by the Court.
4. I then sought to have the defendant brought before the Superior Court to remove the defaults (See Exhibit C) and process the Motion to Vacate.
5. These motions were referred by Judge Hely to the First Criminal Session.
6. The defendant's probation officer in Middlesex, Craig O'Leary, obtained a valid *habeas corpus* for the defendant to appear on April 7, 2005,
7. I was informed by the U.S. Marshals that the *habeas corpus* for the defendant to appear would not be honored.
8. Without the cooperation of the Marshals, the defendant will not have the opportunity to present the grounds for his Motion to Vacate to the Superior Court.
9. The defendant's Board of Probation record (BOP) shows that he is in default on 1994-01391, and that a warrant has issued.

Signed under the penalties of perjury this 14th day of September, 2005.

/s/ Roger Witkin
ROGER WITKIN

EXHIBIT A

ROGER WITKIN
ATTORNEY AT LAW
6 BEACON STREET
BOSTON, MASSACHUSETTS 02108

TEL (617) 523-0027
FAX (617) 523-2024

February 11, 2005

Criminal Clerk
Middlesex Superior Court
40 Thorndike Street, 1st Floor
East Cambridge, MA 02141

RE: COMMONWEALTH V. EDWIN SERRANO
NO. 1994 01511

Gentlepeople:

In regard to the above entitled matter enclosed herewith kindly find Motion To Vacate Conviction, Affidavit, Memorandum and Docket Entries.

Would you kindly bring this motion to the attention of the Presiding Justice.

Mr. Serrano is now in federal custody being held at the Essex County Jail in Middleton, Massachusetts.

Thank you.

Very truly yours,

ROGER WITKIN

/slw

encs.

c.c. client
District Attorney's Office

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT
NO. 1994 01511

COMMONWEALTH

V.

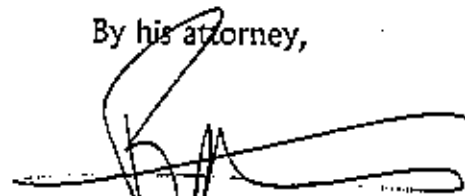
EDWIN SERRANO

MOTION TO VACATE CONVICTION

The defendant moves to vacate his conviction on the above numbered indictment because at all times that he appeared in Court, whether it be for arraignment, plea or violation of probation, there was never a Spanish speaking interpreter interpreting what was going on.

Attached hereto please find a copy of the docket entries in the case which do not reflect an interpreter being present, and the defendant's Affidavit. The defendant requests a hearing on this motion.

By his attorney,



ROGER WITKIN
6 Beacon Street,
Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX_S.S.

SUPERIOR COURT

NO. 1994 01511

COMMONWEALTH

V.

EDWIN SERRANO

AFFIDAVIT/DECLARACION JURADA

1. My name is Edwin Serrano.
2. I am the defendant in this case.
3. There was no Spanish interpreter in the Court when I was arraigned cargos on September 9, 1994.
4. There was no Spanish interpreter in the Court when I pleaded guilty on November 16, 1994.

Signed this day of 22/08/2005,
under the penalties of perjury.

/s/ Edwin Serrano

EDWIN SERRANO

1. Me llamo Edwin Serrano.
2. Soy el acusado de este caso.
3. No hubo intérprete al español en el Tribunal cuando me leyeron los el 9 de septiembre de 1994.
4. No hubo intérprete al español en el Tribunal cuando me declaré culpable el 16 de noviembre de 1994.

Firmado este de de 22/08/2005
bajo pena de perjurio

Edwin Serrano

EDWIN SERRANO

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT
NO. 1994 01511

COMMONWEALTH

V.

EDWIN SERRANO

**MEMORANDUM OF LAW ON SUPPORT OF
DEFENDANT'S MOTION TO VACATE CONVICTION**

As set out in the defendant's Motion and Affidavit, the defendant a Spanish speaking person was never appointed an interpreter by the Court. A hearing will disclose that the defendant's attorney informally translated for him. The defendant's inability to speak and understand English was apparent to the Court and the actions of defense counsel attempting to both represent the defendant and translate for him was obvious. Well knowing the situation the Court that took no action *sua sponte* to appoint an interpreter

While the Supreme Court has established that it is within the discretion of the Court whether to appoint an interpreter, Perovich v United States, 205 US 86, 91 (1907), it has not found a right to state-provided interpreters to be a constitutional absolute since that issue has never been squarely presented. Lower federal courts have held, however, that if the Court is put on notice that a defendant has a language difficulty, the court must make it unmistakably clear to him that he has the right to have a competent translator assist him, at state expense if he is indigent, throughout the proceeding. United States v Carrion, 488 F2d 12, 15 (1st Cir 1973), cert denied, 416 US 907 (1974); United

States ex rel. Negron v New York, 434 F2d 386, 390-91 (2d Cir 1970). Conversely, if the need for an interpreter's services is not apparent nor are such services requested, it is no abuse of discretion to fail to advise a defendant of their availability. United States v Barrios, 457 F2d 680, 682 (9th Cir 1972).

While the defendant recognizes that no constitutional authority that presently exists in Massachusetts for providing a non-English speaking person the right to an independent interpreter. See Commonwealth v. Alves, 35 Mass. App. Ct. 935, 937 (1993), in this case, the blatant disregard of the defendant's right renders the entire proceedings invalid

In this case the judge abused his discretion under Rule 41, by failing to appoint a certified interpreter, and in so doing, violated the defendant's rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights, to be present and participate in his own defense. See Commonwealth v. Blaikie, 375 Mass. 601, 608 (1978).

Massachusetts Rules of Criminal Procedure, Rule 41 (INTERPRETERS AND EXPERTS) provides in pertinent part:

The judge may appoint an interpreter or expert if justice so requires and may determine the reasonable compensation for such services and direct payment therefor.

The right of a defendant to be present at trial means the right in the sense of being able to comprehend and participate meaningfully in the proceeding and the requirement that a defendant have "sufficient . . . ability to consult with his lawyer with a reasonable degree of rational understanding." Dusky v United States, 362 US 402 (1960). See also Lewis v United States, 146 US 370, 372 (1892) and United States ex rel. Negron v New York, 434 F2d 386 (2d Cir 1970).

The six amendment right to be confronted with adverse witnesses, applicable to the states through the fourteenth amendment, mandate that an interpreter be available to the defendant or witness who cannot effectively communicate. See Pointer v Texas, 380 US 400 (1965). Otherwise, "[t]he adjudication loses its character as a reasoned interaction . . . and becomes an invective against an insensible object." United States ex rel. Negron, supra at 389, quoting Note, Incompetency to Stand Trial, 81 HARV L REV 454, 458 (1969).

The Massachusetts Rule of Criminal Procedure, Rule 41 is modeled on the Federal Court Interpreters Act, 28 U.S.C. § 1827 and the federal decisions concerning the application of the rule are instructive. It is well settled that under the Court Interpreters Act "the appointment of an interpreter lies within the sound discretion of the trial judge." United States v. Coronel-Quintana, 752 F.2d 1284, 1291 (8th Cir. 1985) citing United States v. Tapia, 631 F.2d 1207, 1210 (5th Cir. 1980). Once the District Court decides to appoint an interpreter, however, it is obligated to follow the mandates of the Court Interpreters Act. Both federal procedure and Massachusetts procedure require a certified interpreter.

In this case when the Court failed to appoint a certified interpreter or to determine whether a certified interpreter was reasonably necessary before proceeding with the defense lawyer as an informal interpreter the court committed plain error. See United States v. Thompson, 289 F.3d 524, 526 (8th Cir. 2002) (citing United States v. Olano, 507 U.S. 725, 732-33, 123 L. Ed. 2d 508, 113 S. Ct. 1770 (1993)). To constitute plain error, a court ruling must be (1) an error, (2) which is plain, i.e., clear

under current law, and (3) which affects the defendant's substantial rights. Thompson, 289 F.3d at 526; United States v. Montanye, 996 F.2d 190, 192 (8th Cir. 1993). It is error that seriously affects the fairness, integrity, or public reputation of judicial proceedings. See Thompson, 289 F.3d at 526 (citing Olano, 507 U.S. at 732).

Here, the Court's failure to appoint a certified interpreter to assist the defendant indeed constitutes plain error. The rule is clear: once a Court determined OR BECAME AWARE OF THE FACT, that the defendant was in need of an interpreter, the Court should not have proceeded with the assistance of the defense attorney but rather it was obligated to use a certified interpreter. See United States v. Paz, 981 F.2d 199, 200 (5th Cir. 1992). The certification requirement is intended to provide a procedural safeguard for non-native English speaking defendants during legal proceedings. Paz, 981 F.2d at 200 ("The certification process serves as a safeguard to guarantee that the Court interpreter is competent."); United States v. Huang, 960 F.2d 1128, 1135 (2d Cir. 1992) ("Implicit in [the qualification] requirement is the notion that the interpreter should be competent to render accurate translations." [Quoting United States v. Villegas, 899 F.2d 1324, 1348 (2d Cir. 1990)]).

The principle purpose of Rule 41 and the CIA is "to ensure that the defendant can comprehend the proceedings . . . " through the appointment of a certified interpreter. United States v. Febus, 218 F.3d 784, 791 (7th Cir. 2000).

Judges are entrusted with great discretion because defendants do not have an automatic right to an interpreter under Rule 41 as in its Federal counterpart the Federal Court Interpreters Act. A defendant is only entitled to the appointment of an interpreter

if the Court determines that the defendant: (1) speaks only or primarily a language other than the English language; and (2) this fact inhibits their comprehension of the proceedings or communication with counsel. In making this determination, at Court must evaluate a variety of factors, including defendant's knowledge of English and the complexity of the proceedings and testimony. Courts have a duty to evaluate these factors when put on notice that the defendant speaks only or primarily a language other than English. See e.g., 28 U.S.C. § 1827(d)(1).

Courts may be put on notice by motion of the parties, or, as in this case, by the Court's own recognition, when it is clear that the defendant's communication with the Court or counsel is inhibited by language. Once a Court is on notice, it has a duty to inquire as to whether the fact that the defendant speaks only or primarily a language other than English inhibits his or her ability to comprehend the proceedings and communicate with counsel. See United States v. Rosa, 946 F.2d 505, 508 (7th Cir. 1991) [citing United States v. Moya-Gomez, 860 F.2d 706, 740 (7th Cir. 1988)].

The United States Supreme Court has yet to recognize the right to a court-appointed interpreter as a constitutional one. But, in 1907, the Supreme Court stated: "One [claim] is that the court erred in refusing to appoint an interpreter when the defendant was testifying. This is a matter largely resting in the discretion of the trial court, and it does not appear from the answers made by the witness that there was any abuse of discretion." Perovich v. United States, 205 U.S. 86, 91, 51 L. Ed. 722, 27 S. Ct. 456 (1907). It was not until 1970 that a circuit court held that an indigent criminal defendant

who could not speak or understand English was constitutionally entitled to an interpreter. See Negron v. New York, 434 F.2d 386, 387 (2d Cir. 1970).

In United States v. Cirrincione, 780 F.2d 620, 634 (7th Cir. 1985), the Court held that "a defendant in a criminal proceeding is denied due process when: (1) what is told to him is incomprehensible; (2) the accuracy and scope of a translation at a hearing or trial is subject to grave doubt; (3) the nature of the proceeding is not explained to [the defendant] in a manner designed to insure his full comprehension; or (4) a credible claim of incapacity to understand due to language difficulty is made and the district court fails to review the evidence and make appropriate findings of fact.".

Cases from various circuits have since also recognized such a constitutional right which are compiled in United States v. Mayans, 17 F.3d 1174, 1179-81 (9th Cir. 1994) (holding that the defendant's Fifth Amendment rights were violated when interpreter withdrawn by court); see also United States v. Carrion, 488 F.2d 12, 14-15 (9th 1973).

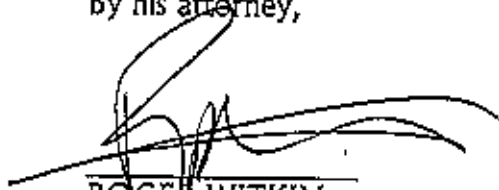
CONCLUSION

In this case upon becoming aware of the fact that the defendant did not speak English and that his attorney was translating for him, the Court, *sua sponte*, was obliged both by Rule 41 and the defendant's Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights.

Respectfully submitted,

EDWIN SERRANO

By his attorney,



ROGER WITKIN
6 Beacon Street,
Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

S-20040909

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
Case Summary
Criminal Docket

11/29/2004

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MICR1994-01511
Commonwealth v Serrano, Edwin

File Date	08/17/1994	Status	Disposed (sentenced) (dsenimp)
Status Date	11/16/1994	Session	6 - Crim 6 (Lowell)
Jury Trial	Unknown	Origin	1 - Indictment
Lead Case			

Arrestment	09/09/1994	Track		Final PTC	
Resp. Deadline	09/09/1995	Deadline Status	Deadline active since return date	Status Date	09/12/1994
Pro Se Deft	No	Custody Status		Start Date	
Weapon		Substance		Prior Record	Unknown

OFFENSES				
Num	Offense	Code	Status	Status Date
	01/13/1994	265:015B:b	Guilty plea	11/16/1994
	Assault, dangerous weapon			
	01/13/1994	265:015B:b	Guilty plea	11/16/1994
	Assault, dangerous weapon			
	01/13/1994	265:015B:b	Guilty plea	11/16/1994
	Assault, dangerous weapon			
	01/13/1994	265:015B:b	Guilty plea	11/16/1994
	Assault, dangerous weapon			
	01/13/1994	269:010:a	Guilty plea	11/16/1994
	Dang weapon, possess gun, no license, on person/in MV			
	01/13/1994	269:010:h.1	Guilty plea	11/16/1994
	Dang weapon, possess/transfr gun/ammo, no ID card			
	01/13/1994	269:011C	Guilty plea	11/16/1994
	Remove/mutilate firearm serial#, receive such firearm			
	12/08/1993	094C:032A:c	Guilty plea	11/16/1994
	Class B substnc, phencyclidine/cocaine, distrib/manufac			

PARTIES	
Defendant Edwin Serrano Gender: Male Date 08/17/1994	Private Counsel 548038 Richard P Howe Jr 11 Kearney Square Lowell, MA 01852 Phone: 978-454-9167 Fax: 978-453-4419 Active 09/09/1994 Notify
Plaintiff Commonwealth Gender: Unknown Date 08/17/1994	District Atty's Office 559563 Alison M Takacs Middlesex County District Atty's Office 40 Thorndike Street East Cambridge, MA 02141 Phone: 617-494-4050 Fax: 617-225-0871 Active 09/09/1994 Notify

AS-20040909

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
Case Summary
Criminal Docket

11/29/2004

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MICR1994-01511
Commonwealth v Serrano, Edwin

Alias deft name
Edwin Maldonado
Sender: Male
Alias (see real party's status) 08/17/1994

ENTRIES		
ite	Paper	Text
1/17/1994	1.0	Indictment returned
10/9/1994		Appearance of Commonwealth's Atty: Takacs
10/9/1994	2.0	Appointment of Counsel Howe Jr #0792892-2
10/9/1994		Appearance of Deft's Atty: Howe Jr
10/9/1994		Deft arraigned before Court
10/9/1994		RE offense 1: Plea of not guilty
10/9/1994		RE offense 2: Plea of not guilty
10/9/1994		RE offense 3: Plea of not guilty
10/9/1994		RE offense 4: Plea of not guilty
10/9/1994		RE offense 5: Plea of not guilty
10/9/1994		RE offense 6: Plea of not guilty
10/9/1994		RE offense 7: Plea of not guilty
10/9/1994		RE offense 8: Plea of not guilty
10/9/1994		Bail set: \$50,000.00 with surety or \$5,000.00 cash (Charles J Hely, Justice) Mittimus issued not recognizing.
10/9/1994		09/27/94 for motions on all matters.
10/9/1994	3.0	Mittimus not recognizing indictments returned with service endorsed thereon.
2/7/1994	4.0	Pre-trial conference report, Filed in Court.
2/7/1994		Continued until 10/17/94 for assignment of a trial date on all matters.
2/9/1994	5.0	Commonwealth's Notice of Discovery, Filed in Court.
1/6/1994		Plea of not guilty changed to guilty; accepted (Charles J Hely, Justice) Commonwealth moves for sentence.
1/6/1994		RE offense 1: Guilty plea
1/6/1994		RE offense 2: Guilty plea
1/6/1994		RE offense 3: Guilty plea
1/6/1994		RE offense 4: Guilty plea
1/6/1994		RE offense 5: Guilty plea
1/6/1994		RE offense 6: Guilty plea
1/6/1994		RE offense 7: Guilty plea
1/6/1994		RE offense 8: Guilty plea
1/6/1994		Sentence imposed: 001 - ON FILE BY ORDER OF C. HELY, J. DEFENDANT NOT OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE.
1/6/1994		Sentence imposed: 002 - ON FILE BY ORDER OF C. HELY, J. DEFENDANT NOT OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE.
1/6/1994		Sentence Imposed: 003 - ON FILE BY ORDER OF C. HELY, J. DEFENDANT NOT

AAS-20040909

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
Case Summary
Criminal Docket

11/29/2004

01:08 PM

MICR1994-01511
Commonwealth v Serrano, Edwin

date	Paper	Text	
1/16/1994		OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE Sentence imposed: 004 - ON FILE BY ORDER OF C. HELY, J. DEFENDANT NOT	
1/16/1994		OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE. Sentence imposed: 005 - HOUSE OF CORRECTION, TWO YEARS.	
1/16/1994		Victim-witness fee assessed: \$50.00	
1/16/1994		This sentence is deemed by the Court to have commenced on.....the defendant having been in confinement.....157.....days. Mitts. Issued. By the Court, Charles J. Hely, Justice.	
1/16/1994		Sentence imposed: 006 - ON FILE BY ORDER OF C. HELY, J. DEFENDANT NOT	
1/16/1994		OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE. Sentence imposed: ON FILE BY ORDER OF C. HELY, J. DEFENDANT NOT	
1/16/1994		OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE. Sentence imposed: ON FILE BY ORDER OF C. HELY, J. DEFENDANT NOT	
1/16/1994	6.0	OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE. Mittimus returned with service on 005.	
1/17/1994		Attested copy of Indictment mailed to the Master of the House of Correction, Billerica.	
1/17/1994		Abstract mailed to the Bureau of Criminal Information.	
EVENTS			
date	Session	Event	Result
1/17/1994	Crim 6 (Lowell)	Conference: Trial Assignment	
1/21/1994	Crim 6 (Lowell)	Status: Review by Session	Event held as scheduled
1/16/1994	Crim 6 (Lowell)	Hearing: Plea Change	Event held as scheduled

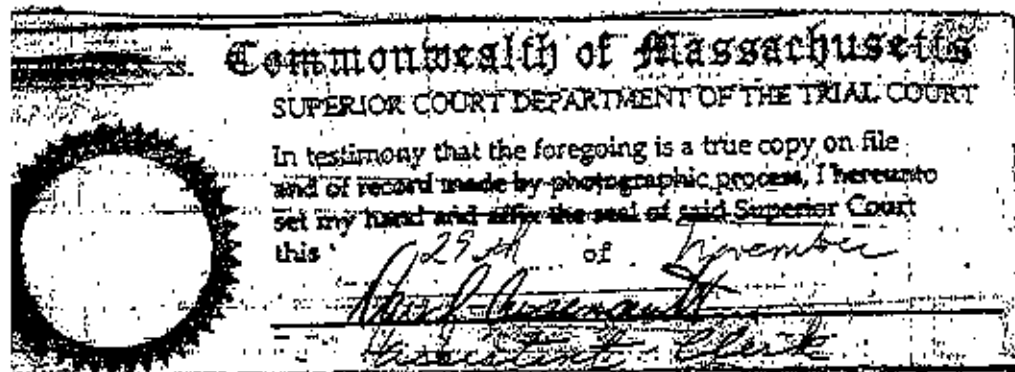


EXHIBIT B

ROGER WITKIN
ATTORNEY AT LAW
6 BEACON STREET
BOSTON, MASSACHUSETTS 02108

TEL (617) 523-0027

FAX (617) 523-2024

February 11, 2005

Criminal Clerk
Middlesex Superior Court
40 Thorndike Street, 1st Floor
East Cambridge, MA 02141

RE: COMMONWEALTH V. EDWIN SERRANO
NO. 1994 01391

Gentlepeople:

In regard to the above entitled matter enclosed herewith kindly find Motion To Vacate Conviction, Affidavit, Memorandum and Docket Entries.

Would you kindly bring this motion to the attention of the Presiding Justice.

Mr. Serrano is now in federal custody being held at the Essex County Jail in Middleton, Massachusetts.

Thank you.

Very truly yours,

ROGER WITKIN

/slw

encs:

c.c. client
District Attorney's Office

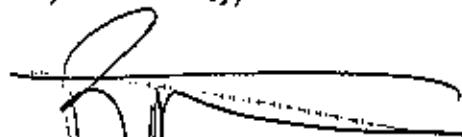
COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, S.S. SUPERIOR COURT
NO. 1994 01391
COMMONWEALTH
V.
EDWIN SERRANO

MOTION TO VACATE CONVICTION

The defendant moves to vacate his conviction on the above numbered indictment because at all times that he appeared in Court, whether it be for arraignment, plea or violation of probation, there was never a Spanish speaking interpreter interpreting what was going on.

Attached hereto please find a copy of the docket entries in the case which do not reflect an interpreter being present, and the defendant's Affidavit. The defendant requests a hearing on this motion.

By his attorney,



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BBO No. 531780

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX S.S.

SUPERIOR COURT

NO. 1994 01391

COMMONWEALTH

V.

EDWIN SERRANO

AFFIDAVIT/ DECLARACION JURADA

- | | |
|---|--|
| 1. My name is Edwin Serrano. | 1. Me llamo Edwin Serrano. |
| 2. I am the defendant in this case. | 2. Soy el acusado de este caso. |
| 3. I served the sentence imposed on this case. | 3. Cumplí yo la condena que se impuso en este caso. |
| 4. There was no Spanish interpreter in the Court when I was arraigned on August 19, 1994. | 4. En el Tribunal no hubo intérprete al español cuando me leyeron los cargos el 19 de agosto de 1994. |
| 5. There was no Spanish interpreter in the Court when I pleaded guilty on November 16, 1994. | 5. No hubo intérprete al español en el Tribunal cuando me declaré culpable el 16 de noviembre de 1994. |
| 6. There was no Spanish interpreter when I was found in violation of probation at a Probation Revocation Hearing on February 7, 1997. | 6. No hubo intérprete al español cuando fallaron que violé la libertad condicional, en una audiencia de revocar libertad condicional, el 7 de febrero de 1997. |
| 7. There was no Spanish interpreter when I was brought in to Court on July 10, 2000. | 7. No hubo intérprete al español cuando me llevaron ante el Tribunal el 10 de Julio de 2000. |
| 8. There was no Spanish interpreter when I was released on personal recognizance on November 16, | 8. No hubo intérprete al español cuando me pusieron en libertad bajo palabra el 16 de noviembre |

2000.

9. There was no Spanish interpreter when I appeared on December 30, 2002.

10. There was no Spanish interpreter present on November 13, 2003 for the final Probation Hearing.

Signed this day of 02/05/ 2005,
under the penalties of perjury.

/s/ Edwin Serrano

EDWIN SERRANO

de 2000.

9. No hubo intérprete al español cuando comparecí el 30 de diciembre de 2002.

10. No hubo intérprete al español el 13 de noviembre de 2003, para la audiencia final de libertad condicional.

Firmado este de 02/05/ de 2005
bajo pena de perjurio.

Edwin Serrano
EDWIN SERRANO

= : COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT
NO. 1994 01391

COMMONWEALTH

V.

EDWIN SERRANO

**MEMORANDUM OF LAW ON SUPPORT OF
DEFENDANT'S MOTION TO VACATE CONVICTION**

As set out in the defendant's Motion and Affidavit, the defendant a Spanish speaking person was never appointed an interpreter by the Court. A hearing will disclose that the defendant's attorney informally translated for him. The defendant's inability to speak and understand English was apparent to the Court and the actions of defense counsel attempting to both represent the defendant and translate for him was obvious. Well knowing the situation the Court that took no action *sua sponte* to appoint an interpreter

While the Supreme Court has established that it is within the discretion of the Court whether to appoint an interpreter, Perovich v United States, 205 US 86, 91 (1907), it has not found a right to state-provided interpreters to be a constitutional absolute since that issue has never been squarely presented. Lower federal courts have held, however, that if the Court is put on notice that a defendant has a language difficulty, the court must make it unmistakably clear to him that he has the right to have a competent translator assist him, at state expense if he is indigent, throughout the proceeding. United States v Carrion, 488 F2d 12, 15 (1st Cir 1973), cert denied, 416 US 907 (1974); United

States ex rel. Negron v New York, 434 F2d 386, 390-91 (2d Cir 1970). Conversely, if the need for an interpreter's services is not apparent nor are such services requested, it is no abuse of discretion to fail to advise a defendant of their availability. United States v Barrios, 457 F2d 680, 682 (9th Cir 1972).

While the defendant recognizes that no constitutional authority that presently exists in Massachusetts for providing a non-English speaking person the right to an independent interpreter. See Commonwealth v. Alves, 35 Mass. App. Ct. 935, 937 (1993), in this case, the blatant disregard of the defendant's right renders the entire proceedings invalid

In this case the judge abused his discretion under Rule 41, by failing to appoint a certified interpreter, and in so doing, violated the defendant's rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights, to be present and participate in his own defense. See Commonwealth v. Blaikie, 375 Mass. 601, 608 (1978).

Massachusetts Rules of Criminal Procedure, Rule 41 (INTERPRETERS AND EXPERTS) provides in pertinent part:

The judge may appoint an interpreter or expert if justice so requires and may determine the reasonable compensation for such services and direct payment therefor.

The right of a defendant to be present at trial means the right in the sense of being able to comprehend and participate meaningfully in the proceeding and the requirement that a defendant have "sufficient . . . ability to consult with his lawyer with a reasonable degree of rational understanding." Dusky v United States, 362 US 402 (1960). See also Lewis v United States, 146 US 370, 372 (1892) and United States ex rel. Negron v New York, 434 F2d 386 (2d Cir 1970).

The six amendment right to be confronted with adverse witnesses, applicable to the states through the fourteenth amendment, mandate that an interpreter be available to the defendant or witness who cannot effectively communicate. See Pointer v Texas, 380 US 400 (1965). Otherwise, "[t]he adjudication loses its character as a reasoned interaction . . . and becomes an invective against an insensible object." United States ex rel. Negron, supra at 389, quoting Note, Incompetency to Stand Trial, 81 HARV L REV 454, 458 (1969).

The Massachusetts Rule of Criminal Procedure, Rule 41 is modeled on the Federal Court Interpreters Act, 28 U.S.C. § 1827 and the federal decisions concerning the application of the rule are instructive. It is well settled that under the Court Interpreters Act "the appointment of an interpreter lies within the sound discretion of the trial judge." United States v. Coronel-Quintana, 752 F.2d 1284, 1291 (8th Cir. 1985) citing United States v. Tapia, 631 F.2d 1207, 1210 (5th Cir. 1980). Once the District Court decides to appoint an interpreter, however, it is obligated to follow the mandates of the Court Interpreters Act. Both federal procedure and Massachusetts procedure require a certified interpreter.

In this case when the Court failed to appoint a certified interpreter or to determine whether a certified interpreter was reasonably necessary before proceeding with the defense lawyer as an informal interpreter the court committed plain error. See United States v. Thompson, 289 F.3d 524, 526 (8th Cir. 2002) (citing United States v. Olano, 507 U.S. 725, 732-33, 123 L. Ed. 2d 508, 113 S. Ct. 1770 (1993)). To constitute plain error, a court ruling must be (1) an error, (2) which is plain, i.e., clear

under current law, and (3) which affects the defendant's substantial rights. Thompson, 289 F.3d at 526; United States v. Montanye, 996 F.2d 190, 192 (8th Cir. 1993). It is error that seriously affects the fairness, integrity, or public reputation of judicial proceedings. See Thompson, 289 F.3d at 526 (citing Olano, 507 U.S. at 732).

Here, the Court's failure to appoint a certified interpreter to assist the defendant indeed constitutes plain error. The rule is clear: once a Court determined OR BECAME AWARE OF THE FACT, that the defendant was in need of an interpreter, the Court should not have proceeded with the assistance of the defense attorney but rather it was obligated to use a certified interpreter. See United States v. Paz, 981 F.2d 199, 200 (5th Cir. 1992). The certification requirement is intended to provide a procedural safeguard for non-native English speaking defendants during legal proceedings. Paz, 981 F.2d at 200 ("The certification process serves as a safeguard to guarantee that the Court interpreter is competent."); United States v. Huang, 960 F.2d 1128, 1135 (2d Cir. 1992) ("Implicit in [the qualification] requirement is the notion that the interpreter should be competent to render accurate translations." [Quoting United States v. Villegas, 899 F.2d 1324, 1348 (2d Cir. 1990)]).

The principle purpose of Rule 41 and the CIA is "to ensure that the defendant can comprehend the proceedings . . . " through the appointment of a certified interpreter. United States v. Febus, 218 F.3d 784, 791 (7th Cir. 2000).

Judges are entrusted with great discretion because defendants do not have an automatic right to an interpreter under Rule 41 as in its Federal counterpart the Federal Court Interpreters Act. A defendant is only entitled to the appointment of an interpreter

if the Court determines that the defendant: (1) speaks only or primarily a language other than the English language; and (2) this fact inhibits their comprehension of the proceedings or communication with counsel. In making this determination, at Court must evaluate a variety of factors, including defendant's knowledge of English and the complexity of the proceedings and testimony. Courts have a duty to evaluate these factors when put on notice that the defendant speaks only or primarily a language other than English. See e.g., 28 U.S.C. § 1827(d)(1).

Courts may be put on notice by motion of the parties, or, as in this case, by the Court's own recognition, when it is clear that the defendant's communication with the Court or counsel is inhibited by language. Once a Court is on notice, it has a duty to inquire as to whether the fact that the defendant speaks only or primarily a language other than English inhibits his or her ability to comprehend the proceedings and communicate with counsel. See United States v. Rosa, 946 F.2d 505, 508 (7th Cir. 1991) [citing United States v. Moya-Gomez, 860 F.2d 706, 740 (7th Cir. 1988)].

The United States Supreme Court has yet to recognize the right to a court-appointed interpreter as a constitutional one. But, in 1907, the Supreme Court stated: "One [claim] is that the court erred in refusing to appoint an interpreter when the defendant was testifying. This is a matter largely resting in the discretion of the trial court, and it does not appear from the answers made by the witness that there was any abuse of discretion." Perovich v. United States, 205 U.S. 86, 91, 51 L. Ed. 722, 27 S. Ct. 456 (1907). It was not until 1970 that a circuit court held that an indigent criminal defendant

who could not speak or understand English was constitutionally entitled to an interpreter. See Negron v. New York, 434 F.2d 386, 387 (2d Cir. 1970).

In United States v. Cirrincione, 780 F.2d 620, 634 (7th Cir. 1985), the Court held that "a defendant in a criminal proceeding is denied due process when: (1) what is told to him is incomprehensible; (2) the accuracy and scope of a translation at a hearing or trial is subject to grave doubt; (3) the nature of the proceeding is not explained to [the defendant] in a manner designed to insure his full comprehension; or (4) a credible claim of incapacity to understand due to language difficulty is made and the district court fails to review the evidence and make appropriate findings of fact."

Cases from various circuits have since also recognized such a constitutional right which are compiled in United States v. Mayans, 17 F.3d 1174, 1179-81 (9th Cir. 1994) (holding that the defendant's Fifth Amendment rights were violated when interpreter withdrawn by court); see also United States v. Carrion, 488 F.2d 12, 14-15 (9th 1973).

CONCLUSION

In this case upon becoming aware of the fact that the defendant did not speak English and that his attorney was translating for him, the Court, *sua sponte*, was obliged both by Rule 41 and the defendant's Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights.

Respectfully submitted, :

EDWIN SERRANO

By his attorney,

A handwritten signature in black ink, appearing to read 'Roger Witkin', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'R'.

ROGER WITKIN
6 Beacon Street,
Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

IAS-20040909

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
Case Summary
Criminal Docket

11/29/2004

01:03 PM

MICR1994-01391
Commonwealth v Serrano, Edwin

File Date	08/04/1994	Status	Suspended (default warrant) (suwarr)
Status Date	01/29/2004	Session	1 - Crim 1 (6B Cambridge)
Jury Trial	Unknown	Origin	1 - Indictment
Lead Case			

Arrestment	08/19/1994	Track		Final PTC	
Disp. Deadline	08/19/1995	Deadline Status	Deadline active since return date	Status Date	08/22/1994
Pro Se Deft	No	Custody Status		Start Date	
Weapon		Substance		Prior Record	Unknown

OFFENSES				
Item	Offense	Code	Status	Status Date
	06/11/1994	265:024.1	Guilty plea	11/16/1994
	Assault, intent to rape			
	06/11/1994	265:019:b	Guilty plea	11/16/1994
	Robbery, unarmed			
	06/11/1994	265:013H	Guilty plea	11/16/1994
	Indecent assault & battery on person 14 or over			
	06/11/1994	275:002	Guilty plea	11/16/1994
	Threat(s)			
	06/11/1994	094C:034.1	Guilty plea	11/16/1994
	Controlled substnc, possess			

PARTIES	
Defendant Edwin Serrano DOB: 02/10/1976 Gender: Male Arrest Date: 08/04/1994	Private Counsel 548038 Richard P Howe Jr 11 Kearney Square Lowell, MA 01852 Phone: 978-454-9167 Fax: 978-453-4419 Withdrawn 07/10/2000 Private Counsel 556389 Debra D DeWitt Ahern & DeWitt 200 Central Street Lowell, MA 01852 Phone: 978-970-2989 Fax: 978-970-2633 Inactive 12/30/2002

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Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
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Plaintiff
Commonwealth
Sender: Unknown
Active 08/04/1994

Private Counsel 552751
Stephen J Wright
335 Common Street
Lawrence, MA 01840
Phone: 978-685-3377
Fax: 978-687-8328
Active 12/30/2002 Notify

District Atty's Office 559563
Alison M Takacs
Middlesex County District Atty's Office
40 Thorndike Street
East Cambridge, MA 02141
Phone: 617-494-4050
Fax: 617-225-0871
Active 08/19/1994 Notify

ENTRIES

Date	Paper	Text
04/1994	1.0	Indictment returned
16/1994		Continued until 08/19/94 for arraignment on all matters.
19/1994	2.0	Appointment of Counsel Howe, Jr.
19/1994		Appearance of Deft's Atty: Howe Jr
19/1994		Appearance of Commonwealth's Atty: Takacs
19/1994		Deft arraigned before Court
19/1994		RE offense 1: Plea of not guilty
19/1994		RE offense 2: Plea of not guilty
19/1994		RE offense 3: Plea of not guilty
19/1994		RE offense 4: Plea of not guilty
9/1994		RE offense 5: Plea of not guilty
9/1994		Ball set: \$20,000.00 with surety or \$2,000.00 cash (Martha B Sosman, Justice) Mitimus issued not recognizing.
9/1994		Continued until 09/09/94 for pre-trial conference on all matters.
9/1994	3.0	Mittimus not recognizing Indictments returned with service.
9/1994		Deft notified of right to request drug exam
9/1994	4.0	Pre-trial conference report, Filed in Court.
9/1994		Continued until 09/27/94 for motions on all matters.
7/1994		Continued until 10/17/94 for assignment of a trial date on all matters.
9/1994	5.0	Commonwealth's Notice of Discovery, Filed in Court.
1/1994		Continued until 11/16/94 for an assignment of a trial date by agreement on all matters.
3/1994		Plea of not guilty changed to guilty; accepted (Charles J Hely, Justice) Commonwealth moves for sentence.
3/1994		RE offense 1: Guilty plea
3/1994		RE offense 2: Guilty plea
3/1994		RE offense 3: Guilty plea

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te	Paper	Text
16/1994		RE offense 4: Guilty plea
16/1994		RE offense 5: Guilty plea
16/1994		Sentence imposed: 001-M.C.I., Cedar Junction for a term not exceeding Seven Years, or less than Five Years. This sentence to take effect from and after expiration of the sentence imposed this day in #94-1151-005. Sentence suspended for three years. Deft as principal and J Burke as surety recog in \$100 and on Three Years Probation Terms: (1) No Contact, Employment Or School (2) Evaluation for Drug Abuse (Charles J Hely, Justice)
16/1994		Sentence imposed: 002 - MASSACHUSETTS CORRECTIONAL INSTITUTION, CEDAR JUNCTION FOR A TERM NOT EXCEEDING....SEVEN....YEARS, OR LESS THAN....FIVE.....YEARS. This sentence to be served concurrently with the sentence imposed this day in #94-1391-001. Sentence suspended for three years. Defendant as principal and J. Burke as surety recognizing in \$100.00 and on three years probation. (see #94-1391-001. By the Court, Charles J. Hely, Justice.
6/1994		Sentence imposed: 003 - MASSACHUSETTS CORRECTIONAL INSTITUTION, CEDAR JUNCTION FOR A TERM NOT EXCEEDING....SEVEN...YEARS, OR LESS THAN.... FIVE....YEARS. This sentence to be served concurrently with the sentence imposed this day in #94-1391-001. By the Court, Charles J. Hely, Justice.
3/1994		Sentence imposed: 004 - ON FILE BY ORDER OF C. HELY, J., DEFENDANT NOT OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE.
3/1994		Sentence imposed: 005 - ON FILE BY ORDER OF C. HELY, J. DEFENDANT NOT OBJECTING THERETO. BY THE COURT, CHARLES J. HELY, JUSTICE.
7/1994		Abstract mailed to the Bureau of Criminal Information.
7/1996	6.0	Attorney's Motion to Withdraw, Filed in Court.
7/1997	7.0	Habeas corpus for Deft at Essex Correctional Facility (Middleton)
7/1997		AFTER HEARING, DEFENDANT IS FOUND IN VIOLATION OF PROBATION AND IS SURRENDERED.
7/1997		Sentence imposed: 001 - THE SUSPENDED PORTION OF THE SENTENCE IMPOSED ON NOVEMBER 16, 1997 IS THIS DAY IN FULL FORCE AND EFFECT - FORTHWITH. MITTS ISSUED. THE DEFENDANT IS FURTHER ORDERED TO BE PLACED ON PROBATION FOR A PERIOD OF THREE YEARS (J. BURKE AS SURETY) TO BE SERVED FROM AND AFTER THE ABOVE IMPOSED SENTENCE. BY THE COURT, (BALL, J.)
1997		Sentence imposed: 002 - MASSACHUSETTS CORRECTIONAL INSTITUTION, CEDAR JUNCTION FOR A TERM NOT EXCEEDING....SEVEN YEARS.... OR LESS THAN.... FIVE YEARS..... THREE YEARS TO BE SERVED. This sentence to be served concurrently with the sentence imposed this day in #94-1391-01. By the Court, (Ball, J.)
1997		Sentence imposed: 003 - MASSACHUSETTS CORRECTIONAL INSTITUTION, CEDAR JUNCTION FOR A TERM NOT EXCEEDING.... SEVEN YEARS..... OR LESS THAN.... FIVE YEARS..... THREE YEARS TO BE SERVED FORTHWITH. MITTS ISSUED. This sentence to be served concurrently with the sentence imposed this day in #94-1391-01. By the Court, (Ball, J.)

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Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
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to	Paper	Text
07/1997		Notified of right of appeal under Rule 64 "Appeal Court"
07/1997		Mittimus issued on indictments 001, 002, and 003 issued to MCI Cedar Junction
07/1997	8.0	Mittimus on indictment 001,002 and 003 returned with service
18/1997		Letter from Dept of Corrections regarding sentence
01/1997		Amended Mittimus issued to MCI Cedar Junction
01/1997		003 - THE SENTENCE IMPOSED ON NOVEMBER 16, 1994 IS THIS DAY AMENDED TO READ: FOUR (4) TO FIVE (5) YEARS AT CEDAR JUNCTION. MITTS ISSUED BY THE COURT, (Hely, J.)
06/2000		Defendant defaulted; warrant to issue
06/2000		Warrant was entered onto the Warrant Management System 06/06/2000
10/2000	9.0	Appointment of Counsel Debra D DeWitt
10/2000		Appearance of Def't's Atty: Debra D DeWitt
10/2000		Default removed; warrant recalled
0/2000		Bail set: \$50,000 surety or \$5,000 cash (Hely, J.)
0/2000		Mittimus issued not recog. indictments
0/2000		Bail warning read in open court
0/2000		Continued until 7/27/00 for status
0/2000		Reporter present: Virginia Karas
4/2000	10.0	Mittimus Not Recog. - Indictments returned with service
6/2000		Bail set on 7/10/00 revoked
6/2000		Def't released on personal recognizance (Fabricant, J)
8/2000		Probation continued to original date 12/3/2002
8/2000		Reporter present: Virginia Karas
5/2001	11.0	Probation warrant issued
8/2002	12.0	Habeas corpus for Def't at Middlesex County Jail (Cambridge) for Monday, December 30, 2002.
1/2002		VTP warrant recalled
1/2002		Appearance of Def't's Atty: Stephen J Wright
1/2002		Bail set: \$20,000 surety or \$2,000 cash (Locke, J)
1/2002		Mittimus issued
1/2002		Continued until 2/14/03 for final surrender in 6B at request of both sides
1/2002		Conditions Of Bail: If bail is made def't is to report to probation. Remain employed. Stay at same residence with girlfriend (Locke, J)
1/2002	13.0	Mittimus (001) not recog. indictments returned with service
1/2003		Habeas corpus for Def't at Camb. Jail 02-14-02
1/2003	14.0	Bail satisfied: \$2000.00 Cash Red # 9985 Surety: Defendant
1/2003	15.0	Clerks Minutes on Probation Hearing (Garsh, Judge, presiding) P.O. Craig O'Leary Result: Continued to 04/11/03 Assistant Clerk Daniel H Doherty
2003	16.0	Clerks Minutes On Probation Hearing (Ball, Judge presiding) Result: Off list-request of Probation Assistant Clerk Matt. Day
2003		Reporter present: Leary, Mary
2003	17.0	Clerks Minutes on probation Hearing (Hines, judge, presiding) continued to 07/11/03 for final surrender Assistant Clerk Matt. Day

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Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
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Commonwealth v Serrano, Edwin

ite	Paper	Text
12/29/2003		Reporter present: Lynch, Jr., John M.
1/11/2003	18.0	Clerk's Minutes on Probation Hearing: (Pasquale,CM) Presiding PO Craig O'Leary off the list by agreement
1/11/2003		Reporter present: Lynch, Jr., John M.
1/19/2003	19.0	Clerk's Minutes on Probation Hearing: (Agnes,J) Presiding PO Craig O'Leary PO Reports case scheduled for 8-19-03 for final surrender at 2 pm
1/19/2003		Reporter present: Jacques, Robert
1/19/2003	20.0	Clerks Minutes on Probation Hearing Pasquale J., Presiding--Probation Officer C. O'Leary--Result Off List No Judge Available. (Court Reporter John Lynch (MD/AC)
1/13/2003	21.0	Clerks Minutes on Probation Hearing Chernoff, J. Presiding--Probation Officer C. O'Leary--Defendant Attorney Stephen Wright--Final Surrender Hearing--Result: Violation of probation found. Additional condition (1) Report every other week in person with job & residential verification. (2) Random Urine Screening.--Continued to 1/29/04 (M/AC)
3/2/2003		Continued until January 29, 2004
3/2/2003		Reporter present: Welch, Maureen
1/9/2004		Defendant defaulted; warrant to issue
1/9/2004		Warrant was entered onto the Warrant Management System January 29, 2004

EVENTS			
	Session	Event	Result
6/1994	Crim 6 (Lowell)	Arraignment	
9/1994	Crim 6 (Lowell)	Habe issued. Arraignment	Event held as scheduled
9/1994	Crim 6 (Lowell)	Habe issued. Conference: Pre-Trial	Event held as scheduled
7/1994	Crim 6 (Lowell)	Habe issued. Hearing: Motion	Event held as scheduled
7/1994	Crim 6 (Lowell)	Habe issued. Conference: Trial Assignment	
3/1994	Crim 6 (Lowell)	TRIAL: by jury	
3/1994	Crim 6 (Lowell)	Habe Issued 10/17 TRIAL: by jury	
3/1994	Crim 6 (Lowell)	Hearing: Plea Change	Event held as scheduled
7/1997	Crim 6 (Lowell)	Habe issued 10/24 Hearing: Probation Surrender	Event held as scheduled
1/2000	Crim 6 (Lowell)	Habe issued 2/5/97 Hearing: Probation Report	Event canceled not re-scheduled
1/2000	Crim 6 (Lowell)	Assignment of Counsel Hearing: Probation Report	Defendant did not appear/default
1/2000	Crim 6 (Lowell)	appt of counsel Hearing: Misc Matters	Event held as scheduled
1/2000	Crim 6 (Lowell)	Habe cancelled for 7/7, rescheduled for 7/10 for Default removal Hearing: Probation Report	Event not held--scheduled for another date
1/2000	Crim 6 (Lowell)	Habe Issued to Camb. Jail Hearing: Probation Surrender	Event not held--scheduled for another date
1/2000	Crim 6 (Lowell)	Habe issued to Camb	

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MIDDLESEX SUPERIOR COURT
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Commonwealth v Serrano, Edwin

ate	Session	Event	Result
1/16/2000	Crim 6 (Lowell)	Hearing: Probation Report	Event held as scheduled
1/25/2001	Crim 6 (Lowell)	Habe issued to Camb Hearing: Probation Report	Defendant did not appear/default
2/30/2002	Crim 6 (Lowell)	appt of counsel; PO Craig O'Leary; 2pm Hearing: Probation Report	Event held as scheduled
2/14/2003	Crim 1 (6B Cambridge)	HABE ISSUED TO CAMBRIDGE. Hearing: Probation Report	Event held as scheduled
4/11/2003	Crim 1 (6B Cambridge)	PO O'Leary Hearing: Probation Report	Event not held--joint request
5/29/2003	Crim 1 (6B Cambridge)	P.O. Craig O'Leary Hearing: Probation Report	Event held as scheduled
7/11/2003	Crim 1 (6B Cambridge)	P.O. Craig O'Leary Hearing: Probation Surrender	Event not held--req of Defendant
7/19/2003	Crim 1 (6B Cambridge)	P.O. Craig O'Leary Hearing: Probation Surrender	Event not held--req of Defendant
7/19/2003	Crim 1 (6B Cambridge)	P.O. Craig O'Leary Hearing: Probation Surrender	Event not held--req of Commonwealth
7/13/2003	Crim 1 (6B Cambridge)	P.O. Craig O'Leary Hearing: Probation Surrender	Event held as scheduled
7/29/2004	Crim 1 (6B Cambridge)	Hearing: Probation Report PO O'Leary	Defendant did not appear/default

Bail Type Cash
Bail Amount \$2,000.00
Bail Status Satisfied
Bail Date 01/06/2003

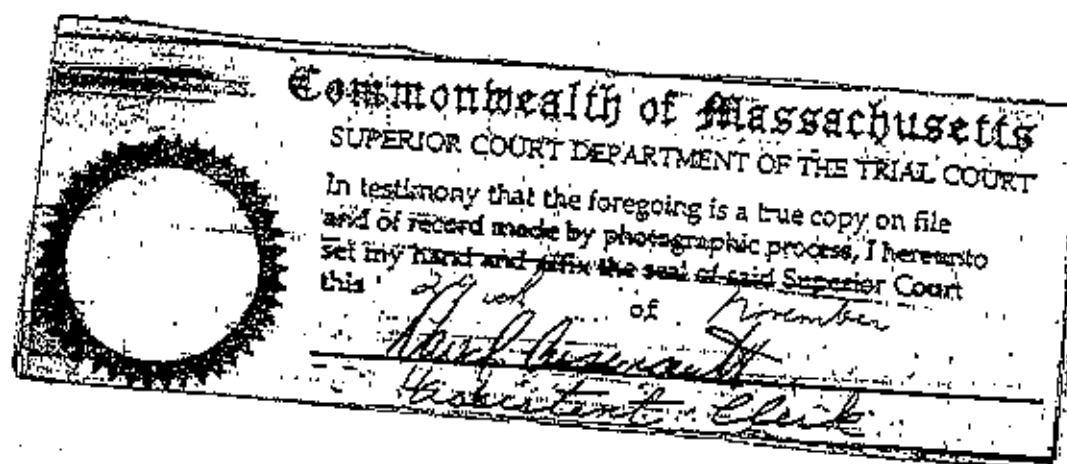


EXHIBIT C

Commonwealth of Massachusetts
Superior Court

Middlesex, ss.

Ind. 1994-01391, 1 through 5; 2
and 1994-01511, 1 through 8

COMMONWEALTH


v.

EDWIN SERRANO

MEMORANDUM OF DECISION AND ORDER
ON MOTION TO VACATE CONVICTION

This motion is denied because, according to the most recent docket entries, the defendant has been on default with an outstanding default warrant since January 29, 2004, on Indictment case 1994-01391. The court will not consider the merits of a post-conviction motion while the defendant is a fugitive.

February 16, 2005


Charles J. Hely
Justice

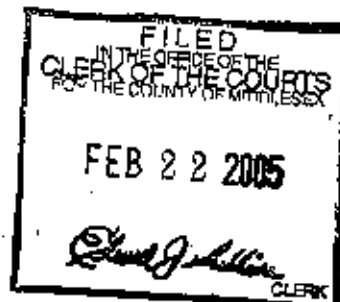


EXHIBIT D

ROGER WITKIN
ATTORNEY AT LAW
6 BEACON STREET
BOSTON, MASSACHUSETTS 02108

TEL (617) 523-0027
FAX (617) 523-2024

March 9, 2005

Criminal Clerk
Middlesex Superior Court
40 Thorndike Street, 1st Floor
East Cambridge, MA 02141

RE: COMMONWEALTH V. EDWIN SERRANO
NO. 1994 01511

Gentlepeople:

In regard to the above entitled matter enclosed herewith kindly find Motion
For Speedy Trial and Motion For *Habeas Corpus Ad Prosequendum*.

Would you kindly bring this motion to the attention of the Presiding Justice.

Mr. Serrano is now in federal custody being held at the Essex County Jail in
Middletown, Massachusetts.

Thank you.

Very truly yours,

ROGER WITKIN

/slw

encs.

c.c. client
District Attorney's Office

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT
NO. 1994 01511

COMMONWEALTH.

V.

EDWIN SERRANO

MOTION FOR *HABEAS CORPUS AD PROSEQUENDUM*

The defendant moves for a *habeas corpus ad prosequendum*, in regard to the above matter so that he may resolve the outstanding probation violation, alleged.

The defendant is presently housed in the Essex County House of Correction in Middleton, Massachusetts and is available by process to appear in this Honorable Court.

By his attorney,

ROGER WITKIN
6 Beacon Street,
Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT
NO. 1994 01511

COMMONWEALTH

V.

EDWIN SERRANO

MOTION FOR SPEEDY TRIAL

The defendant moves for a speedy trial of his probation violation, alleged.

By his attorney,

ROGER WITKIN
6 Beacon Street,
Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

EXHIBIT E

ROGER WITKIN
ATTORNEY AT LAW
6 BEACON STREET
BOSTON, MASSACHUSETTS 02108

TEL (617) 523-0027

FAX (617) 523-2024

March 9, 2005

Criminal Clerk
Middlesex Superior Court
40 Thorndike Street, 1st Floor
East Cambridge, MA 02141

RE: COMMONWEALTH V. EDWIN SERRANO
NO. 1994 01391

Gentlepeople:

In regard to the above entitled matter enclosed herewith kindly find Motion
For Speedy Trial and Motion For *Habeas Corpus Ad Prosequendum*.

Would you kindly bring this motion to the attention of the Presiding Justice.

Mr. Serrano is now in federal custody being held at the Essex County Jail in
Middleton, Massachusetts.

Thank you.

Very truly yours,

ROGER WITKIN

/slw
encs.

c.c. client
District Attorney's Office

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT
NO. 1994 01391

COMMONWEALTH

V.

EDWIN SERRANO

MOTION FOR SPEEDY TRIAL

The defendant moves for a speedy trial of his probation violation, alleged.

By his attorney,

ROGER WITKIN
6 Beacon Street,
Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT
NO. 1994 01391

COMMONWEALTH

V.

EDWIN SERRANO

MOTION FOR *HABEAS CORPUS AD PROSEQUENDUM*

The defendant moves for a *habeas corpus ad prosequendum*, in regard to the above matter so that he may resolve the outstanding probation violation, alleged.

The defendant is presently housed in the Essex County House of Correction in Middleton, Massachusetts and is available by process to appear in this Honorable Court.

By his attorney,

ROGER WITKIN
6 Beacon Street,
Suite 1010
Boston, MA 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

EXHIBIT F

COPY

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, S.S.

SUPERIOR COURT
NO. 1994 01511

COMMONWEALTH

V.

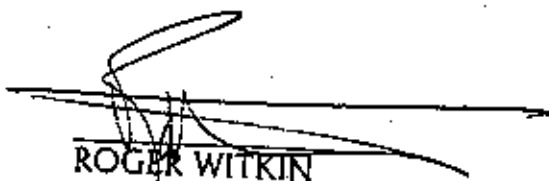
EDWIN SERRANO

MOTION FOR HABEAS CORPUS AD PROSEQUENDUM

The defendant moves for a *habeas corpus ad prosequendum*, in regard to the above matter so that he may resolve the outstanding probation violation, alleged.

The defendant is presently housed in the Essex County House of Correction in Middleton, Massachusetts and is available by process to appear in this Honorable Court.

By his attorney,


ROGER WITKIN
6 Beacon Street,
Suite 1010
Boston, MA 02108
Tel. 617-523-0027
Fax 617-523-2024
BBO NO. 531780

3/14/05 Referred to the
First Criminal Session,
Middlesex. C. Kelly, J.

MAR 11 2005

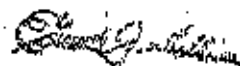

Clerk

EXHIBIT G

MIDD SUP PROB

017/018

Commonwealth of Massachusetts
County of Middlesex
The Superior Court

WRIT OF HABEAS CORPUS FOR DEFENDANT

CRIMINAL DOCKET# 11CR1994-01294

RE: Commonwealth vs. Serrano, Edwin

To: Sheriff,
Essex Correctional Facility (Middleton),
20 Manning Road
Middleton MA 01949

or to the Sheriffs of our several counties; or their deputies; the Officers of the
Court, hereinafter named,

GREETING:

WE COMMAND you that you have the body of
Edwin Serrano, (DOB: 02/10/1976) (PCF#) (hereinafter, Defendant ~~alias~~ (if any),

who is detained in said institution under your custody, as it is said, under safe and sure
conduct, before the Superior Court, Department of the Trial Court, holder at Cambridge, in
said County, for the transaction of criminal business, on: 04/07/2005, at: 10:00 AM in: Rm
08 (Cambridge), then and there to appear for Hearing: Probation Initial: Surrender in said
Court and from day to day thereafter until final disposition of the case and to do and receive
what our said Justices shall then and there consider concerning him in this behalf, and have
you there this writ.

Witness, Barbara J. Rouse, Esquire, Chief Justice of the Superior Court at
Cambridge this 24th day of March in the year of our Lord 2005.

Mary [Signature]
Assistant Clerk

Middlesex, ss.

RETURN
Date:

In obedience to this writ, I have the body of the within-named Edwin Serrano before
the Court.

Officer of the Court

PLEASE NOTE: Our records indicate that the above named defendant is
located at your institution. If, however, he/she has been transferred
please forward this habe immediately per Order of the Court
Barbara J. Rouse, Chief Justice of the Superior Court

EXHIBIT H

03/24/2005 05:20 FAX

NIDD SUP PROB

0009/018

PCF ADULT RECORD INFORMATION AS OF 03/24/2005

PAGE: 1 OF 4

PRIM NAME: SERRANO, EDWIN M

DOB: 02/10/1976 PCF#: 093776CV CSO

SEX: M SS #: 582-77-3974 MOTHER: SANDRA RAMIREZ

FATHER: ANGEL SERRANO

HOME ADDR: 71 NEWBURY ST APT 14 LAWRENCE, MA

ZIP CODE: 01841-

POB: PR

ETHNICITY: HISPANIC

HGT: 002 WGT: 175 HAIR: BLACK

EYES: BROWN

DT: 11/10/2004 FED CRT: BOSTON FEDERAL (F90)
 OFFENSE: DISTRIBUTE/DISPENSE CLASS B (CSA DIST B)
 DISPOSITION: (2 CTS) C

DT# 041004401
 COC LINE BASE
 STATUS: OPEN

DT: 10/01/2002 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: ASSAULT AND BATTERY (A&B)
 DISPOSITION: WAR 12/4/02 WAR/WD C 1/24/03 DISM

DT# 0118CR5821A
 HOUSEHOLD MEMBER
 STATUS: CLOSED

DT: 12/26/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: POSS CLASS B CONT SUB (CSA POSS B)
 DISPOSITION: DE 12/4/02 WAR/WD C 2/12/04 JT WAR

DT# 0018CR8766A
 COC LINE
 STATUS: WARR
 LAW

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: ABUSE PREVENTION ACT (AB-PREV-ACT)
 DISPOSITION: C 10/4/00 DISM

DT# 0018CR3725A
 STATUS: CLOSED

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: ASSAULT AND BATTERY (A&B)
 DISPOSITION: C 11/10/00 DISM

DT# 0018CR3725B
 STATUS: CLOSED

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: KIDNAPPING (KIDN)
 DISPOSITION: C 9/6/00 DISM

DT# 0018CR3907A
 STATUS: CLOSED

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: A&B DANGEROUS WEAPON (A&B DW)
 DISPOSITION: C 9/6/00 DISM

DT# 0018CR3907B
 GUN
 STATUS: CLOSED

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: A&B DANGEROUS WEAPON (A&B DW)
 DISPOSITION: C 9/6/00 DISM

DT# 0018CR3907C
 GUN
 STATUS: CLOSED

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: A&B DANGEROUS WEAPON (A&B DW)
 DISPOSITION: C 9/6/00 DISM

DT# 0018CR3907D
 SHOX FOOT
 STATUS: CLOSED

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: THREATENING (THREAT)
 DISPOSITION: C 9/6/00 DISM

DT# 0018CR3907E
 COM CRIME MURDER
 STATUS: CLOSED

03/24/2005 05:20 FAX

MIDD SUP PROB

0010/018

PCF ADULT RECORD INFORMATION AS OF 03/24/2005

PAGE 2 OF 4

PRIM NAME: SERRANO, EDWIN M

DOB: 02/10/1976 PCF#: 2093776CV CSO

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: ASSAULT AND BATTERY (A&B)
 DISPOSITION: C 9/6/00 DISM
 ECT# 0018CR3907F
 STATUS: CLOSED

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: POSS. FIREARM W/O PERMIT (FIR. POSS. WO. PERM)
 DISPOSITION: C 9/6/00 DISM
 ECT# 0018CR3907G
 NO LICENSE
 STATUS: CLOSED

DT: 06/19/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: POSS. OF FIREARM (FIR. POSS)
 DISPOSITION: C 9/6/00 DISM
 ECT# 0018CR3907H
 W/O IT FIREARM IDCARD
 STATUS: CLOSED

DT: 03/23/2000 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: CONSPIRACY TO VIO CONT SUB. ACT (CSA. CONSP)
 DISPOSITION: C 5/31/00 DF 6/19/00 D/R C 10/4/00 DISM
 ECT# 0018CR2043A
 STATUS: CLOSED

DT: 06/11/1996 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: DISTRIBUTE/DISPENSE CLASS B (CSA DIST B)
 DISPOSITION: C 11/25/96 G 2YR CMTD
 ECT# 9618CR4215A
 COCAINE
 STATUS: CLOSED

DT: 06/11/1996 LAW CRT: LAWRENCE DISTRICT (18)
 OFFENSE: DISTRIBUTE/DISPENSE CLASS B (CSA DIST B)
 DISPOSITION: C 11/25/96 G 2YR CMTD
 ECT# 9618CR4215B
 COCAINE
 STATUS: CLOSED

DT: 09/09/1994 LOW CRT: MIDDLESEX SUPERIOR (81)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: C 11/16/94 FILE
 ECT# 941511001
 HAN GUN
 STATUS: CLOSED

DT: 09/09/1994 LOW CRT: MIDDLESEX SUPERIOR (81)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: C 11/16/94 FILE
 ECT# 941511002
 STATUS: CLOSED

DT: 09/09/1994 LOW CRT: MIDDLESEX SUPERIOR (81)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: C 11/16/94 FILE
 ECT# 941511003
 STATUS: CLOSED

DT: 09/09/1994 LOW CRT: MIDDLESEX SUPERIOR (81)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: C 11/16/94 FILE
 ECT# 941511004
 STATUS: CLOSED

DT: 09/09/1994 LOW CRT: MIDDLESEX SUPERIOR (81)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: C 11/16/94 2 YR CMTD
 ECT# 941511005
 STATUS: CLOSED

DT: 09/09/1994 LOW CRT: MIDDLESEX SUPERIOR (81)
 OFFENSE: POSS. OF AMMUNITION (POSS. AMMO)
 DISPOSITION: C 11/16/94 FILE
 ECT# 941511006
 STATUS: OPEN

03/24/2005 05:20 FAX

MIDD SUP PROB

0011/018

PCF ADULT RECORD INFORMATION AS OF 03/24/2005

PAGE 3 OF 4

PRIM NAME: SERRANO, EDWIN M

DOB: 02/10/1976 PCF#: 2093776CV

CSO

DT: 09/09/1994 LOW CRT: MIDDLESEX SUPERIOR (81)

OFFENSE: DEFAC. FA. ID-NO: (NO CODE)

DISPOSITION: C 11/16/94 FILE

DET# 941511007

STATUS: CLOSED

DT: 09/09/1994 LOW CRT: MIDDLESEX SUPERIOR (81)

OFFENSE: POSS CONTROLLED SUBS W/I DIST (CSA POSS DIST)

DISPOSITION: C 9/30/94 FILE

DET# 941511008

CLASS B

STATUS: CLOSED

DT: 08/16/1994 LOW CRT: MIDDLESEX SUPERIOR (81)

OFFENSE: THREATENING (THREAT)

DISPOSITION: C 11/16/94 FILE

DET# 94139004

STATUS: CLOSED

DT: 08/16/1994 LOW CRT: MIDDLESEX SUPERIOR (81)

OFFENSE: POSS CLASS B CONT SUB (CSA POSS B)

DISPOSITION: C 11/16/94 FILE

DET# 94139005

COCKLINE

STATUS: CLOSED

DT: 08/16/1994 LOW CRT: MIDDLESEX SUPERIOR (81)

OFFENSE: ASSAULT TO RAPE (ASLT RAPE)

DISPOSITION: 11/16/94 5-7 SS 11/15/98 2/7/97 VOP 5-7 YR 3 YR
CMID BAL SS PROB 12/3/99 1/29/04 DE WAR

DET# 941391001

STATUS: WARR
PRO

DT: 08/16/1994 LOW CRT: MIDDLESEX SUPERIOR (81)

OFFENSE: ROBBERY (ROB)

DISPOSITION: 11/16/94 5-7 SS 11/15/98 2/7/97 VOP 5-7 YR 3 YR
CMID BAL SS 12/1/99 1/29/04 DE

DET# 941391002

UNAF 1

STATUS: WARR
PRO

DT: 08/16/1994 LOW CRT: MIDDLESEX SUPERIOR (81)

OFFENSE: INDECENT A&B ON CHILD (A&B IND CH)

DISPOSITION: 11/16/94 5-7 SS 11/15/98 2/7/97 VOP 5-7 YR 3 YR
CMID BAL SS 12/1/99 1/29/04 DE

DET# 941391003

STATUS: WARR
PRO

DT: 06/13/1994 LOW CRT: LOWELL DISTRICT (11)

OFFENSE: ROBBERY (ROB)

DISPOSITION: C 9/13/94 NP

DET# 9411CR4516A

UNAF 1

STATUS: CLOSED

DT: 06/13/1994 LOW CRT: LOWELL DISTRICT (11)

OFFENSE: POSS CLASS B CONT SUB (CSA POSS B)

DISPOSITION: C 9/13/94 NP

DET# 9411CR4516B

COCKLINE

STATUS: CLOSED

DT: 06/13/1994 LOW CRT: LOWELL DISTRICT (11)

OFFENSE: A&B IND

DISPOSITION: C 9/13/94 NP

DET# 9411CR4516C

COCKLINE

STATUS: CLOSED

DT: 06/13/1994 LOW CRT: LOWELL DISTRICT (11)

OFFENSE: ASSAULT (ASLT)

DISPOSITION: C 9/13/94 NP

DET# 9411CR4516D

W/I RAPE

STATUS: CLOSED

DT: 01/14/1994 CRT: LOWELL DISTRICT (11)

OFFENSE: FIREARM VIOLATION (SPECIFY) (FIR)

DISPOSITION: DE 6/13/94 D/R C 9/13/94 NP

DET# 941100337G

DEFACING ID#

STATUS: CLOSED

03/24/2005 03:21 FAX

MIDD SUP PROB

0012/018

PCF ADULT RECORD INFORMATION AS OF 03/24/2005

PAGE: 4 OF 4

PRIM NAME: SERRANO, EDWIN M

DOB: 02/10/1976 PCF#: 1093776CV CSO

DT: 01/14/1994 CRT: LOWELL DISTRICT(11)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9411CR00337A
 HAN GUN
 STATUS: CLOSED

DT: 01/14/1994 CRT: LOWELL DISTRICT(11)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9411CR00337B
 HAN GUN
 STATUS: CLOSED

DT: 01/14/1994 CRT: LOWELL DISTRICT(11)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9411CR00337C
 HAN GUN
 STATUS: CLOSED

DT: 01/14/1994 CRT: LOWELL DISTRICT(11)
 OFFENSE: ASSAULT DANGEROUS WEAPON (ASLT DW)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9411CR00337D
 HAN GUN
 STATUS: CLOSED

DT: 01/14/1994 CRT: LOWELL DISTRICT(11)
 OFFENSE: POSS FIREARM W/O PERMIT (FIR POSS WO PERM)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9411CR00337E
 STATUS: CLOSED

DT: 01/14/1994 CRT: LOWELL DISTRICT(11)
 OFFENSE: POSS OP AMMUNITION (POSS AMMO)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9411CR00337F
 STATUS: CLOSED

DT: 01/14/1994 CRT: LOWELL DISTRICT(11)
 OFFENSE: FIREARM VIOLATION (SPECIFY) (FIR)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9411CR00337H
 DEPENDING ID#
 STATUS: CLOSED

DT: 12/09/1993 CRT: LOWELL DISTRICT(11)
 OFFENSE: TRAFFICKING CONT SUB (CSA TRAFF)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9311CR10004A
 STATUS: CLOSED

DT: 12/09/1993 CRT: LOWELL DISTRICT(11)
 OFFENSE: CONSPIRACY TO VIO CONT SUB ACT (CSA COMSP)
 DISPOSITION: DF 6/13/94 D/R C 9/13/94 NP

DT# 9311CR10004B
 STATUS: CLOSED

DT: 11/02/1993 CRT: LOWELL DISTRICT(11)
 OFFENSE: TRESPASSING (TRES)
 DISPOSITION: DISM

DT# 9311CR0055A
 STATUS: CLOSED

03/24/2005 05:21 FAX

MIDD SUP PROB

0013/018

PAGE 1 OF 3 CIVIL RESTRAINING ORDER IS OF 03/24/2005

DEFENDANT: SERRANO, EDWIN M
 (PRIMARY) MOTHER: SANDRA RAMIREZ
 FATHER: ANGEL SERRANO
 -POB: PR

DOB: 02/10/1976 PCF: 2093776CV C50
 SOC SEC: 582-77-3974

ADDRESS: 71 NEWBURY ST APT 14 LAWRENCE, MA
 ZIP CODE: 01841-

ETHNICITY: HISPANIC HGT: 002 WGT: 175 HAIR: BLACK EYES: BROWN

DEFENDANT: SERRANO, EDWIN M
 PLAINTIFF: JORGE R. CARRASCO
 STREET:
 CITY:

STATE:

DOCKET: 01180673 COURT: 18 ORDER DATE: 07/16/2001 EXP DATE: 07/26/2002
 ORDER: CHAPTER 209A SECTION 3 STATUS: CLOSED

***** COURT ORDERS *****

1. REFRAIN FROM ABUSE
2. NO CONTACT STAY AT LEAST 100 YDS
3. VACATE/STAY AWAY RESD
4. ADDRESS IMPOUNDED
5. STAY AWAY WORKPLACE
12. SURRENDER GUNS, AMMO, LIC, FID

DEFENDANT: SERRANO, EDWIN M
 PLAINTIFF: TAVERAS, RAQUEL
 STREET: 366 LAWRENCE ST. LA
 CITY: LAWRENCE

STATE: MA

DOCKET: 00180579 COURT: 18 ORDER DATE: 06/19/2000 EXP DATE: 06/19/2001
 ORDER: CHAPTER 209A SECTION 3 STATUS: CLOSED

***** COURT ORDERS *****

1. REFRAIN FROM ABUSE
2. NO CONTACT STAY AT LEAST 100 YDS
3. VACATE/STAY AWAY RESD
7. NO CONTACT WITH ANY CHILD NAMED IN & OR LISTED BELOW
 ANTONIO CRUZ ALEXANDER CRUZ JERITHIAN AMADOR
12. SURRENDER GUNS, AMMO, LIC, FID

03/24/2005 05:21 FAX

NIDD SUP PROB

0014/018

PAGE 2 OF 3 CIVIL RESTRAINING ORDER IS OF 03/24/2005

DEFENDANT: SERRANO, EDWIN M.
 (PRIMARY) MOTHER : SANDRA RAMIREZ
 FATHER : ANGEL SERRANO
 DOB : PR

DOB: 02/10/1976 PCF: 1093776CV CSO
 SOC SEC : 582-77-1974

ADDRESS: 71 NEWBURY ST APT 14 LAWRENCE, MA
 ZIP CODE: 01841

ETHNICITY: HISPANIC HGT: 002 WGT: 175 HAIR: BLACK EYES: BROWN

DEFENDANT: SERRANO, EDWIN M.

PLAINTIFF: TAVERAS, RAQUEL

STREET : 50 MELVIN ST APT 10-1
 CITY : LAWRENCE

STATE : PR

DOCKET: 0018RC459 COURT: 18 ORDER DATE : 05/18/2000 EXP DATE : 06/01/2000
 ORDER : CHAPTER 209A SECTION 4 STATUS : CLOSED

***** COURT ORDERS *****

1. REFRAIN FROM ABUSE
2. NO CONTACT STAY AT LEAST 100 YDS
3. VACATE/STAY AWAY RESD AND BLDG
7. NO CONTACT WITH ANY CHILD NAMED IN 6 OR LISTED BELOW STAY AT LEAST 100 YDS
 ANTONIO CRUZ ALEXANDER CRUZ JACINTO ANADOL
12. SURRENDER GUNS, AMMO, LIC, FID

DEFENDANT : SERRANO, EDWIN M.

PLAINTIFF : RAMIREZ, SANDRA

STREET : 366 LOWELL ST
 CITY : LAWRENCE

STATE : MA

DOCKET: 0018RC290 COURT: 18 ORDER DATE : 03/29/2000 EXP DATE : 04/12/2000
 ORDER : CHAPTER 209A SECTION 4 STATUS : CLOSED

***** COURT ORDERS *****

1. REFRAIN FROM ABUSE
2. NO CONTACT STAY AT LEAST 100 YDS
3. VACATE/STAY AWAY RESD
12. SURRENDER GUNS, AMMO, LIC, FID

03/24/2005 05:21 FAX

MIDD SUP PROB

015/018

PAGE 3 OF 3 CIVIL RESTRAINING ORDER AS OF 03/24/2005

DEFENDANT: SERRANO, EDWIN M
 (PRIMARY) MOTHER: SANDRA RAMIREZ DOB: 02/10/1976 PCF: 2093776CV CSO
 FATHER: ANGEL SERRANO
 POB: PR SOC SEC: 582-77-3976

ADDRESS: 71 NEWBURY ST APT 14 LAWRENCE, MA
 ZIP CODE: 01841-

ETHNICITY: HISPANIC HGT: 002 WGT: 175 HAIR: BLACK EYES: BROWN

DEFENDANT: SERRANO, EDWIN M

PLAINTIFF: SANDRA RAMIREZ

STREET: 120 FAYETTE ST
 CITY: LOWELL

STATE: MA

DOCKET: 9311R01598 COURT: 11 ORDER DATE: 10/22/1993 EXP DATE: 11/09/1993
 ORDER: CHAPTER 209A SECTION 3 STATUS: CLOSED

***** COURT ORDERS *****

1. REFRAIN FROM ABUSE
2. NO CONTACT
3. VACATE/STAY AWAY RESD

03/24/2005 05:22 FAX

MIDD SUP PROB

018/018

CONVICTED SEX OFFENDER REPORT AS OF 03/24/2005

PAGE 1 OF 1

PRIM NAME: SERRANO, EDWIN M

DOB: 02/10/1976 PCF#: E093776CV CSO

SEX: M SS #: 582-77-3974 MOTHER: SANDRA RAMIREZ

FATHER: ANGEL SERRANO

HOME ADDR: 71 NEWBURY ST APT 14 LAWRENCE, MA POB: PR

ZIP CODE: 01841-

ETHNICITY: HISPANIC

HGT: 002 WGT: 175 HAIR: BLACK

EYES: BROWN

EMPLOYED [] NOT EMPLOYED [X]

EMPLOYMENT ADDRESS:

CO NAME []

STREET NO SEK STREET NAME

[] [] [] APT BLD

CITY [] STATE [] ZIP [] 1-[]

WORK TELEPHONE []-[]-[] EMPLOYED AT THIS ADDRESS SINCE [00001900]

EXHIBIT I



[Home](#) >> [Service of Process](#) >> [Criminal](#) >> Habeas Corpus

Writ of Habeas Corpus:

A writ of habeas corpus orders the custodian of an individual in custody to produce the individual before the court to make an inquiry concerning his or her detention, to appear for prosecution (*ad prosequendum*) or to appear to testify (*ad testificandum*). State courts may issue such writs to prisoner custodians to produce federal prisoners.

Service: The issuing court will specify the party to execute the writ. The U.S. Marshal or Deputy U.S. Marshal will do so if ordered to by the court. A copy of the writ may be forwarded to the U.S. Marshal for information only even if he or she is not ordered to execute it.

Return: The executing party will make the return once the prisoner has satisfied the court-ordered appearance(s) and has been returned to the original place of incarceration. A partial return will be made when the custody of the prisoner has been relinquished to another authorized party for further removal.

State prisoners appearing before federal court to satisfy a writ of habeas corpus *ad prosequendum* or *ad testificandum* in federal criminal cases will remain in the U.S. Marshal's custody until the proceedings for which the writ was issued

conclude, if so ordered by the court. In cases where the Interstate Agreement on Detainers Act applies, after the prisoner's appearance in court, the court may order the prisoner to be returned to the state custodian pending further court proceedings.

If the case is a federal criminal matter, the USMS will provide for the transportation and custody of state or federal prisoners whose production is commanded. If the writ is issued by a state court, the state must provide for the transportation and custody of the federal prisoner whose production it commands.

The state custodian is responsible for production of its prisoner from the state institution, and this responsibility cannot be shifted by the federal court to the USMS. (See *Pennsylvania Bureau of Corrections v. United States Marshals Service*, 474 U.S. 34 (1985)). State authorities should retain custody of the prisoner within the federal courthouse and produce the prisoner directly before the court each day of the proceeding and house the prisoner for the duration of the proceeding.